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C O N F I D E N T I A L SECTION 01 OF 02 BOGOTA 003628

SIPDIS

E.O. 12958: DECL: 04/06/2015

TAGS: [ECON](#) [KJUS](#) [EPET](#) [CO](#) [PROL](#)

SUBJECT: GOC AIRS CONCERNS OVER CALIFORNIA LAWSUIT AGAINST
OCCIDENTAL PETROLEUM AND AIRSCAN FOR 1998 SANTO DOMINGO
BOMBING

REF: A. 2000 BOGOTA 09890

[B](#). 2001 BOGOTA 00504

[C](#). 02164

[D](#). 05864

[E](#). 11158

[F](#). 2002 BOGOTA 01587

[G](#). 02351

Classified By: Ambassador William B. Wood, reason 1.4 (b).

[1](#). (U) SUMMARY: The MFA has notified the Embassy of its concern over a pending lawsuit in Federal District Court in California concerning the controversial bombing of the Colombian village of Santo Domingo in 1998 (see refuels), which it fears may have negative repercussions on bilateral relations. END SUMMARY.

[2](#). (U) A Colombian filed the lawsuit on April 24, 2003 under the Alien Tort Claims Act. It argues that two U.S. companies, Occidental Petroleum and Airscan Inc., share responsibility for the Colombian Air Force's bombing of the village of Santo Domingo, Arauca department, in December 1998, in which 17 people were killed. An Airscan crew in a small surveillance aircraft, operating on a contract with the Colombian Air Force funded with Occidental contributions, made targeting suggestions to Colombian Air Force helicopter crews during a military confrontation with the FARC near Santo Domingo. At the time, the Airscan aircraft was conducting anti-guerrilla surveillance of the pipeline that carries oil from Occidental's wells in Arauca.

[3](#). (SBU) MFA contacts told EconOff that such a legal process would likely require a weighing of fault. The MFA specifically cited the specter of Colombian air force officers testifying under a U.S. subpoena as a concern. A finding by a U.S. court that the GOC or military acted in bad faith in Colombian territory was also a concern. The Ministry learned that the presiding judge in the case had contacted the Department to inquire about the case's potential impact on bilateral relations, and the MFA transmitted its concerns to post via verbal and diplomatic note.

[4](#). (U) Post received verbal note VER-CEC No. 1278 of March 12, 2004, which referred to the case and stated that "the responsibility of Colombian government for the events... remains under investigation by the Colombian judicial system under the principle of territoriality." Post received Diplomatic Note VRE-CEC No. 12785 of March 12, 2004, in reference to the suit. Informal Embassy translation follows:

The Ministry of Foreign Relations sends its sincere greetings to the Embassy of the United States of America and makes reference to verbal note VER-CEC No. 3866 of February 25, 2004, which mentions a lawsuit filed before the District Court of California on April 24, 2003, against Occidental Petroleum Corporation and Airscan, Inc. for events which took place in the municipality of Santo Domingo, Arauca, Colombia, in December of 1998 (Case No. 03-CV-2860-WJR (JWJX)).

The Ministry of Foreign Relations wishes to add that the Government of Colombia believes an eventual decision in the aforementioned case could have repercussions on its relationship with the United States. The Ministry of Foreign Relations takes this opportunity to assure the Honorable Embassy of the United States of America of its highest consideration.

[5](#). (C) Comment: The Santo Domingo case was not expeditiously investigated by military authorities and has been a thorn in bilateral relations for the past five years. In October 2002, Colombia's Office of the Inspector General ("Procuraduria") ruled that two members of an Air Force helicopter crew acted negligently in dropping a cluster bomb on the town, and suspended them without pay for 90 days. The entire three-member crew was recently indicted by the Office of the Prosecutor General ("Fiscalia") on charges of manslaughter.

[6](#). (C) There is little question that a finding for or against the GOC in this case would be seen by many in Colombia as interference in Colombia's internal affairs and would negatively impact our bilateral relations. As noted in paragraph 4, the GOC is prosecuting this case, albeit tardily. The ruling of a U.S. court on guilt or innocence

could become an issue in the Colombian legal proceeding and/or the public's view of the case.

17. (C) The Embassy relies on the Department for the ultimate determination of the foreign policy implications of the case. We can see adverse effects relating to legal issues, reciprocity, extraterritoriality, as well as bilateral relations. Regarding the bilateral aspects, the Embassy works closely with Oxy and the GOC to preserve the pipeline, the safety of which is an explicit Administration and Congressional goal. Contractors play a large role in Embassy programs, Oxy's protection, other U.S. companies' protection, and in some GOC security programs. A ruling against Oxy and/or Aircan could complicate contracting, recruitment, and/or mission objectives. We already have had several contractors killed in the context of our drug eradication programs, and three U.S. contractors remain hostages of the FARC terrorist group. The eradication program never involves contractors or U.S. personnel in a combat role. But contractors are frequently part of mission planning, which involves coordination of Colombian military forces deployed to clear and temporarily hold regions targeted for anti-drug spraying. An adverse ruling could complicate that relationship. End Comment.

WOOD